

**CHAPTER NO. 785****HOUSE BILL NO. 3529****By Representatives McMillan, Maddox, Bowers, Head****Substituted for: Senate Bill No. 3427****By Senators Cooper, Crutchfield**

AN ACT to amend Tennessee Code Annotated, Section 67-4-2006, relative to the allowance of depreciation for excise tax purposes.

WHEREAS, in March 2002, Congress passed the federal Job Creation and Worker Assistance Act of 2002 (JCWAA) which allowed taxpayers to take additional first-year or "bonus" depreciation in the amount of 30% of the adjusted basis of qualified property provided that future depreciation expenses related to such property were reduced by 30%; and

WHEREAS, the "bonus" depreciation permitted under the JCWAA decreased federal taxable income in certain years and increased federal taxable income in other years; and

WHEREAS, the JCWAA of 2002 created unexpected fiscal issues for Tennessee and other states by unexpectedly shifting federal taxable income between fiscal periods; and

WHEREAS, the ability to accurately forecast state revenues and provide a predictable revenue stream are vital components in assuring a state's fiscal prosperity; and

WHEREAS, the General Assembly joined 30 sister states in seeking to limit fiscal uncertainty by enacting legislation in 2002 to decouple from federal accelerated depreciation for purposes of Tennessee's excise tax; and

WHEREAS, Chapter 856 of the Public Acts of 2002 permanently decoupled Tennessee from federal accelerated depreciation with respect to Tennessee Code Annotated, Section 67-4-2006(b)(2)(I) but not Tennessee Code Annotated, Section 67-4-2006(b)(1)(H); and

WHEREAS, recent actions by the federal government to allow additional accelerated depreciation for federal tax purposes combined with Tennessee's unintended failure to permanently decouple from federal depreciation with respect to Tennessee Code Annotated, Section 67-4-2006(b)(1)(H) have led to unintended state tax consequences that erode the state's current tax base; and

WHEREAS, the General Assembly desires to clarify its intentions relative to its intent to permanently decouple from federal accelerated depreciation; now therefore,

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:**

**SECTION 1.** Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting the language in subsection (H) in its entirety and substituting instead the following:

(H) Any depreciation which the taxpayer deducted in computing its federal taxable income in excess of that which the taxpayer could have deducted in computing

such income if the taxpayer had computed its depreciation under the provisions of § 168 of the Internal Revenue Code as it existed and applied immediately prior to the passage of title 1, § 101, of the Job Creation and Worker Assistance Act of 2002;

SECTION 2. To the extent any taxpayer's liability for fiscal year 2003 is increased by the provisions of this act then the taxpayer shall have until June 30, 2004, to make additional payments with no penalty and interest to accrue.

SECTION 3. This act shall take effect upon becoming a law and apply to tax years ending on or after July 15, 2002, the public welfare requiring it.

**PASSED: May 10, 2004**

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 28<sup>th</sup> day of May 2004**

  
PHIL BREDESEN, GOVERNOR